

AUTO OWNERS INSURANCE CO.,)
)
Plaintiff,)
)
v.) Civil No. 4:05-CV-47
)
JEROME RAIFF,)
)
Defendant.)

MEMORANDUM, ORDER & OPINION

Plaintiff Jerome Raiff filed a motion for default judgment after Defendant Auto-Owners Insurance Company failed to file a timely answer to his counterclaim for breach of contract and bad faith. The Court will adhere to the Seventh Circuit's "well-established policy favoring a trial on the merits over a default judgment," and decline to grant Raiff's motion. *See C.K.S. Engineers, Inc. v. White Mountain Gypsum Co.*, 726 F.2d 1202 (7th Cir. 1984). This result is appropriate for several reasons. First, Auto-Owners filed its answer two days after the motion for default judgment was filed. *See Martin v. Delaware Law Sch. of Widener Univ.*, 625 F.Supp. 1288, 1296 n.3 (D.Del. 1985) (district court refused to enter default judgment when answer filed less than three days after plaintiff moved for default). Second, Auto-Owners has defended against the counterclaim with its subsequent filing of a motion for judgment on the pleadings, and that motion has been resolved in favor of Raiff. Third, the hardship suffered by Auto-Owners if default judgment is entered is potentially great, while the relatively minor delay has not prejudiced Raiff in any way. *See Becker v. Smith*, 554 F.Supp. 767, 768-769 (M.D.Pa. 1982) (where defendant's delay is not great and the plaintiff has neither alleged nor actually suffered prejudice, refusal to grant default judgment is proper). Therefore, Raiff's Motion for Default Judgment (Docket No. 15) is **DENIED**.

SO ORDERED.

DATE: September 28, 2006

S/ ALLEN SHARP

ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT